

AMERCO

ELECTRICAL DISTRIBUTORS

THE POWER TO DELIVER

TERMS OF BUSINESS

Terms of Business to Apply

1. These terms and conditions together with any Quotation or Estimate on which they are endorsed represent the whole agreement between the parties and supersede any prior written or oral agreement between them. The parties confirm that they have not entered into this agreement on the basis of representations that are not expressly incorporated in this agreement.

Price and Payment

- 2.1 The price of the goods shall be the price stipulated in the Seller's published price list current at the date of delivery of the Goods. The price is exclusive of VAT which shall be charge at the rate ruling on the date of VAT invoice.
- 2.2 Unless the Buyer has a valid credit facility with the Seller, payment of the price and the VAT shall be due immediately on the date of invoice. Time for payment shall be of the essence.
- 2.3 Interest on overdue accounts shall accrue from the date when payment becomes due from day to day until the date of payment. This will be at the rate of *5 above HSBC plc's base rate from time to time in force and shall accrue as such a rate after as well as before any judgment.
- 2.4 The Seller may by giving notice to the Buyer at any time up to 7days before delivery increase the price of the goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including, without limitations, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). Provided that the Buyer may cancel this contract within 7 days of any such notice from the seller.

Description

- 3.1 The goods shall be manufactured and/or supplied in accordance with the description contained in the Seller's specification.
- 3.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of Goods.

Delivery

- 4.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all the arrangements necessary to take the delivery of the Goods whenever they are tendered for delivery.
- 4.2 The risk in the goods shall pass to the buyer upon such delivery taking place including when permission is given by the Buyer to leave goods on site with no attendance and no signature of acceptance of the Goods.

Time limits upon bringing claims for defects, damage, loss or non-delivery

- 5.1 The Buyer shall inspect the goods on delivery and shall within 3days of delivery, notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or sample. The buyer shall afford the Seller an opportunity to inspect the goods within a reasonable time following delivery and before any use is made of them .If the Buyer shall fail to comply with these provisions the goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the goods and the Buyer shall be deemed to have accepted the Goods.
- 5.2 If the goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the price.

Liability

- 6.1 Subject to conditions set out below, the warrants that the Goods will correspond with their specifications at the time of delivery and will be free from defects in materials and workmanship for a period of 12 months from the date of dispatch provided that no warranty is given in respect of components manufactured by a third party which are fitted by the seller.

- 6.2 The above warranty is given by the Seller subject to the following conditions
- 6.2.1 The Seller shall be under no liability for any defect in the Goods arising from any drawing, design or specification supplied by the Buyer or his agent.
- 6.2.2 The Seller shall be under no liability in respect of any defect arising from negligence of the Buyer, abnormal working conditions, with failure to follow instructions, misuse or alteration or repair of the goods without the seller's approval.
- 6.2.3 All goods returned under this warranty shall be returned carriage paid and with a letter of authorisation issued by the Seller.
- 6.3 Subject as expressly provided in these Terms of Business all warranties, conditions or other terms implied by statute or common law are excluded.
- 6.4 Where any valid claim is made in accordance with this clause 5, The Seller shall be entitled to repair or replace the Goods free of charge or, at the Seller absolute discretion, refund to the Buyer the price of the defective Goods.
- 6.5 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.
- 6.6 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstance shall the liability of the Seller exceed the price of the Goods.

Ownership

- 7.1 In spite of delivery having been made, property of the Goods shall not pass from the Seller until:
 - 7.1.1 the Buyer shall have paid the price plus VAT in full; and
 - 7.1.2 no other sums whatever shall be due from the Buyer to the Seller
- 7.2 Until property of the Goods passes to the Buyer in accordance with clause 6.1 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no costs to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 7.3 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until the property of the Goods passes from the Seller to the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be paid into any overdrawn bank account and shall be at all material times regards as the Seller's property..
- 7.4 The Seller shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 7.5 Until such time in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller may enter upon any premises owned or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 6.3 shall cease.
- 7.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.7 The Buyer shall insure and keep insured Goods to the full price against "all risks" to the reasonable satisfaction of the Seller until the date that the property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

Insolvency

- 8.0 If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's Goods or if the Buyer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if any petition for the appointment of an administrator is present against the Buyer or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of their Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:
 - 8.1 suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part. And/or

- 8.2 exercise any of its rights pursuant to clause 6.

Intellectual Property

- 9.1 Where the Buyer supplies goods or designs for incorporation into the Seller's products the Buyer shall indemnify and keep indemnified the Seller against any claims and liability for infringement of any third party intellectual property rights.
- 9.2 No right or licence is granted under this contract of sale to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use or resell the Goods.

Drawings and Data

- 10.1 All specifications, drawings, installation drawings, wiring diagrams, particulars of weights, dimensions, capacities and all data relating to the Goods are offers by the Seller in good faith but the Buyer accepts that they are approximations only and the supplier gives no warranty as to their accuracy.
- 10.2 The Seller's policy is one of continuous improvement and the right is reserved to change designs, dimensions and descriptive material at any time without notice.

Cancellation

- 11.0 The Seller may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any such sums paid in respect of the price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

Returns

- 12.0 No Goods supplied in accordance with this contract will be accepted for credit unless the Seller's written approval has first been obtained and the terms agreed on which the goods may be returned. The return of specially order items will not be accepted and nor will cancellation of special orders prior to delivery if any expenditure has been incurred.

Assignment

- 13.0 The Seller may licence or sub contract all or any part of its rights and obligations under this contract without the Buyers consent.

Force Majeure

- 14 Neither party shall be liable for any default due to any act of god, war, strike, lockout, industrial action, fire, flood, drought, storm or any other event beyond the reasonable control of either party.

Governing Law

- 15.0 This contract is subject to the law of England and Wales

Illegality

- 16.0 If any provision of these terms and condition shall in whole or in part be held, to any extent, to be illegal or unenforceable under any enactment or rule of law, such provision shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of the agreement shall not be affected. Further, the parties shall amend that provision in such a reasonable manner as achieves the intention of the parties without illegality.

Definitions

- "Seller" Amerco Electrical Distributors Limited.
- "Buyer" Yourself/Yourselves
- "Goods" any goods ordered by the Buyer and supplied or to be supplied by the firm